

27 April 2018

Our Ref: MC/INSP/BKR

To: Chief Executives of all authorized insurance brokers

Dear Sirs,

Onsite Inspection Visits to Insurance Brokers

As you are aware, the Insurance Authority (“IA”) has taken over the regulatory work of the Office of the Commissioner of Insurance since 26 June 2017 to regulate the insurance industry in Hong Kong. In respect of insurance brokers, the IA is responsible for overseeing their compliance with the following requirements:

- a) the minimum requirements specified for the purpose of sections 69(2) and 70(2) of the Insurance Ordinance (Cap. 41);
- b) the requirements specified under section 9(2) of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615), if the insurance brokers are engaging in long term insurance business; and
- c) the performance requirements as defined under section 34E of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), if the insurance brokers are carrying on MPF regulated activities.

The IA considers onsite inspection visit as an important supervisory tool to gauge the level of compliance by insurance brokers. As such, the IA has conducted onsite inspection visits to different insurance brokers since its establishment in June 2017. To enhance the effectiveness and efficiency of regulatory oversight, the IA has taken a new initiative to adopt a holistic approach in conducting onsite inspection visits to insurance brokers. In this regard, a comprehensive assessment on an insurance broker for ascertaining its compliance with all the above requirements would be conducted in one onsite inspection. Under this approach, the IA will not only be able to have a better understanding of the corporate culture and internal controls of an insurance broker as a whole, but also cause less disruption to the daily operation of the insurance broker.

With a view to facilitating market development and raising the standards of the insurance brokers industry, the IA would share with you some key findings observed during its recent onsite inspection visits to insurance brokers. Details of the key findings with suggested good practices are summarized at the Annex for your attention. In respect of the issues identified, the insurance brokers concerned have been requested to take remedial actions. In addition, matters involving potential non-compliance with regulatory requirements are subject to further follow-up actions.

Please be reminded that the senior management of insurance brokers is responsible for ensuring adequate internal controls and procedures are properly established and maintained at all times. The IA will continue to assess the compliance of insurance brokers with the abovementioned requirements by conducting inspection visits, and to take follow-up actions as appropriate with the individual insurance broker if there is any concern.

Should you have any enquiries regarding the above, please contact Mr. Alan Wu at 3899 9748 or Ms. Shirley To at 3899 9768.

Yours faithfully,

Stephen Po
Executive Director
Market Conduct Division
Insurance Authority

Encl.

c.c. The Hong Kong Confederation of Insurance Brokers
Professional Insurance Brokers Association

Summary of Key Inspection Findings

Section A: The minimum requirements specified for the purpose of sections 69(2) and 70(2) of the Insurance Ordinance (Cap. 41)

A1 Keeping of Separate Client Account

In accordance with section 3(D) of the Guideline on Minimum Requirements for Insurance Brokers issued by the IA (“Minimum Requirements Guideline”), an insurance broker is required to keep client monies in a client account separate from his own monies. As a general principle, monies received from client for the purpose of purchasing contract of insurance should be paid into a client account, and premium monies required to be paid on behalf of client to insurers should be withdrawn from a client account.

However, it was noted from an insurance broker that it occasionally used its own operating bank account (“operating account”), instead of the client account, to receive and then pay premium monies of clients. Besides, the senior management used own personal bank account in another jurisdiction to collect insurance premiums from clients located there, and then requested the insurance broker concerned to make the premium payments to the insurers in Hong Kong via the broker’s operating account. Under these circumstances, the premium monies received from the clients had never been deposited into the client account and thereby the insurance broker concerned might have failed to keep client monies in a client account separate from its own monies in accordance with the Minimum Requirements Guideline.

In another case where an insurance broker did not hold a cheque book for its client account, the insurance broker, instead of applying for a cheque book under its client account for direct settlement with insurers, transferred the monies from the client account to its own operating account in order to settle the premium payments with insurers by cheques. Such practice is considered undesirable as it will render the client monies to be mixed with the insurance broker’s own monies.

Insurance brokers sometimes would enter into business agreements with introducers for referral of insurance business. However, it was noted from an insurance broker that its introducers collected general insurance premiums for the insurance broker concerned from the clients first, and then remitted the premium monies to the insurance broker concerned subsequently after deducting their own referral commissions.

Good Practices:

Insurance brokers should establish and maintain proper internal controls and procedures to ensure that all monies received from the clients are directly deposited into the client account without going through the account of a third party, and they should be directly remitted to the insurers from the client account for premium payments. If insurance brokers accept the referral of insurance business from introducers, they should not allow the latter to collect insurance premium monies from clients on their behalf.

A2 Insurance Contracts Issued by Insurers Not Authorized in Hong Kong

In accordance with section 4(E)(b) of the Minimum Requirements Guideline, if an insurance broker, at the request of its client or as a result of the absence of suitable products available locally, refers or arranges a contract of insurance with an insurer authorized in other jurisdiction but not authorized in Hong Kong, it shall advise its client of the unauthorized status of the insurer and obtain a written acknowledgement of the fact from the client. Where the client is a corporate entity, it may, in lieu of obtaining a written acknowledgement of the fact, include a notice to the corporate client in the cover note or placement confirmation.

However, it was noted that some insurance brokers had failed to retain proper documentation of the above requisite acknowledgements obtained from or notice sent to their clients when they arranged insurance contracts with insurers not authorized in Hong Kong.

Good Practices:

Insurance brokers should establish and maintain proper internal controls and procedures to ensure that when they arrange insurance contracts with insurers not authorized in Hong Kong, the requisite written acknowledgements obtained from the individual clients or the requisite notice given to corporate clients are properly retained in their business records and readily accessible for inspection purpose.

A3 Delivery of Long Term Insurance Policies

In accordance with section 4(E)(g) of the Minimum Requirements Guideline, an insurance broker shall deliver any new long term insurance policy issued by the insurer through him to his client without delay. Such requirement is considered important for safeguarding the clients' rights to cancel their new long term insurance policies issued by insurers within the 21-day cooling-off period under the Hong Kong Federation of Insurers' initiative on "Cooling-off Period".

However, it was noted that some insurance brokers had not put in place any mechanism to monitor the timeline of policy delivery by their staff and/or technical representatives (“TRs”). In certain cases, the insurance brokers concerned were unable to inform the dates as to when the policy documents were received from insurers or when the policy documents were provided to the relevant clients.

Good Practices:

Insurance brokers should establish and maintain proper controls and procedures to monitor and record the receipt of policy documents from insurers and the subsequent delivery to the clients, and to take necessary follow-up actions with the responsible parties if there is any delay.

Section B: The requirements specified under section 9(2) of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615)***B1 Policies and Procedures***

In accordance with paragraph 2.1 of the Guideline on Anti-Money Laundering and Counter-Terrorist Financing issued by the IA (“AML/CTF Guideline”), an insurance broker engaging in long term insurance business should implement appropriate internal AML/CTF policies, procedures and controls to ensure that proper safeguards exist to mitigate the risks of money laundering and terrorist financing (“ML/TF”) and to prevent a contravention of any AML/CTF requirements.

However, it was noted that some insurance brokers had not devised any written AML/CTF policies and procedures internally so as to provide guidance to their staff and TRs for combating ML/TF in a systematic manner.

On the other hand, for some insurance brokers with written AML/CTF policies and procedures, it was revealed that the relevant information provided therein was very limited as it just generally quoted the AML/CTF requirements under the relevant ordinances but failed to specifically set out the key AML/CTF controls and procedures that should be put in place by the insurance brokers in their daily operations. Furthermore, it was found that the written AML/CTF policies and procedures of some insurance brokers had not been regularly reviewed or updated since their preparation a few years ago.

Good Practices:

Insurance brokers should devise their own AML/CTF policies and procedures with sufficient details in order to demonstrate that proper safeguards have been put in place to mitigate the risks of ML/TF and to prevent a contravention of any AML/CTF requirements. Furthermore, once the written AML/CTF policies and procedures have been prepared, insurance brokers should keep those documents under regular review to ensure that they remain up-to-date and meet the latest statutory and regulatory requirements.

B2 Risk Assessment

In accordance with paragraphs 3.1 and 3.2 of the AML/CTF Guideline, an insurance broker engaging in long term insurance business should determine the extent of customer due diligence measures using a risk-based approach depending upon the background of the customer and the product, transaction or service used by that customer.

However, it was noted that some insurance brokers solely relied on the AML/CTF controls and procedures put in place by insurers (e.g. to complete a designated form prescribed by the insurer to obtain additional information from customer in specified situation, etc.) without conducting any ML/TF risk assessment of individual customers on their own and/or adopting different customer due diligence measures based on the ML/TF risk rating assigned to each of the individual customers.

Good Practices:

Insurance brokers should not solely rely on the AML/CTF controls and procedures put in place by insurers. Instead, insurance brokers should take appropriate steps to identify the ML/TF risks exposed by themselves in their daily operations by taking into account of various risk factors (including country risk, customer risk, product/service risk and delivery/distribution channel risk), and assess the ML/TF risks of individual customers by assigning a ML/TF risk rating to each of them. The general principle is that where customers are assessed to be of higher ML/TF risks, insurance brokers should take enhanced measures to manage and mitigate those risks, and that correspondingly where the risks are lower, simplified measures may be applied.

B3 Record Keeping

In accordance with paragraph 8.3 of the AML/CTF Guideline, an insurance broker engaging in long term insurance business should keep the original or a copy of the documents, and a record of the data and information, obtained in the course of identifying and verifying the identity of the customer.

However, it was noted that some insurance brokers had failed to keep copies of customers' identification documents in certain circumstances, especially when the relevant insurance applications were processed at the insurers' offices since the application documents were then collected by the insurers directly and the responsible TRs might have forgotten to get back copies of customers' identification documents for the insurance brokers' own retention.

Besides, it was noted from some insurance brokers that the customers' identification document images kept in their records were not in good quality (i.e. either blurred or darkened) and to some extent, it was difficult to re-verify the identification of the customers solely based on those records.

Good Practices:

Insurance brokers should establish and maintain proper controls and procedures to ensure that the requisite identification documents are collected from customers for each business transaction and are then retained in good quality.

B4 Screening of Politically Exposed Persons, Terrorists and Sanction Designations

In accordance with paragraph 4.13.9 of the AML/CTF Guideline, an insurance broker engaging in long term insurance business must establish and maintain effective procedures for determining whether a customer is a Politically Exposed Person (“PEP”). Besides, according to paragraph 6.22 of the AML/CTF Guideline, an insurance broker should screen customers against current terrorists and sanction designations at the establishment of the relationship and thereafter, as soon as practicable after new terrorists and sanction designations are published.

However, it was noted that some insurance brokers did not put in place proper screening mechanism to identify whether their customer was a PEP, terrorist or sanction designation at the establishment of the relationship or on an on-going basis. On the other hand, for some insurance brokers who claimed that they had conducted screening exercise, it was revealed that there was no proper documentation to demonstrate that the name screening procedures had been performed as those insurance brokers concerned had neither set out the name screening mechanism in their procedural manuals, nor had they retained the screening result in respect of each of the individual customers in the relevant customer files.

Good Practices:

Insurance brokers should establish and maintain an effective screening mechanism to identify whether their customer is a PEP, terrorist or sanction designation and ensure that all the name screening exercise conducted are properly documented as audit trail.

B5 Suspicious Transaction Monitoring and Reporting

In accordance with paragraph 7.23 of the AML/CTF Guideline, an insurance broker engaging in long term insurance business should establish and maintain procedures to ensure that all staff are made aware of the identity of the Money Laundering Reporting Officer (“MLRO”) and all suspicious reports must reach the MLRO without undue delay.

However, it was noted that some insurance brokers might have failed to establish or maintain sufficient procedures to ensure that all of their staff and TRs were made aware of the identity of the MLRO (e.g. by making regular announcement by email or circular or including such information in the internal documents). In these circumstances, some of their staff and TRs were not aware of the function and identity of the MLROs appointed by the insurance brokers concerned as well as the reporting procedures concerning the suspicious transactions.

Good Practices:

Insurance brokers should establish and maintain proper controls and procedures to ensure that all staff are made aware of the identity of the MLRO and make it clear to all the staff and TRs that under no circumstances should the suspicious reporting be filtered out by person who has no responsibility for the money laundering reporting or compliance function.

B6 AML/CTF Training

In accordance with paragraph 9.5 of the AML/CTF Guideline, an insurance broker engaging in long term insurance business should provide appropriate AML/CTF training to their staff. The frequency of training should be sufficient to maintain the AML/CTF knowledge and competence of the staff.

However, it was noted that some insurance brokers had neither provided any AML/CTF training to their staff and TRs, nor had they arranged their staff and TRs to attend any AML/CTF training organized by external parties. Under such circumstances, the insurance brokers might not be able to demonstrate that their staff and TRs were adequately trained for carrying out their particular roles with respect to AML/CTF.

Good Practices:

Insurance brokers should implement a clear and well-articulated policy for ensuring that the relevant staff and TRs will receive adequate AML/CTF training. Insurance brokers are encouraged to consider using a mix of training techniques and tools in delivering training, depending on the resources available and learning needs of their staff. However, no matter which training approach is adopted, insurance brokers should monitor and maintain records of who and when have been trained and the type of the training provided.

Section C: The performance requirements as defined under section 34E of the Mandatory Provident Fund Schemes Ordinance (Cap. 485)***C1 Compliance regarding Registration Requirements***

Under the existing regulatory regime for MPF intermediaries, all companies or individuals, except as specified in the relevant legislation, have to be registered as MPF intermediaries before they can engage in the MPF regulated activities, such as sales and marketing of MPF schemes as well as provision of advice about MPF schemes. Besides, in accordance with paragraph III.60(c) of the Guidelines on Conduct Requirements for Registered Intermediaries (“MPF Conduct Guidelines”) issued by the Mandatory Provident Fund Schemes Authority (“MPFA”), an insurance broker registered as MPF principal intermediary should have in place arrangements, procedures and controls to ensure that only MPF registered intermediaries are used in undertaking MPF regulated activities on its behalf.

However, it was noted from one inspection of insurance broker that a few MPF transactions were handled by a TR without a valid registration with the MPFA as a subsidiary intermediary (“SI”) at the relevant period of the MPF transactions concerned. Moreover, the remunerations relating to the MPF transactions concerned were also paid to the TR by the insurance broker eventually. Under such circumstances, it casted doubt on whether there was any possible contravention of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (“MPFSO”) regarding the relevant registration requirements.

Good Practices:

As it is an offence under the MPFSO for anyone who is not a registered MPF intermediary to engage in MPF regulated activities, insurance brokers should, in accordance with paragraph III.60(c) of the MPF Conduct Guidelines, put in place proper controls and procedures to safeguard that only those TRs who have been properly registered with the MPFA as their SIs can undertake MPF regulated activities on their behalf.

C2 Policies and Procedures

In accordance with paragraphs III.60(a) and III.60(b) of the MPF Conduct Guidelines, an insurance broker registered as MPF principal intermediary should have adequate resources and satisfactory control procedures at all times for compliance with relevant legal and regulatory MPF requirements by itself and by its SIs, and supervise adequately and monitor SIs’ compliance with any manuals, guidelines and checklists for the conduct of the MPF regulated activities.

However, it was noted that some insurance brokers did not have in place any written policies and procedures to provide guidance to their SIs in conducting MPF regulated activities. On the other hand, for some insurance brokers with written MPF policies and procedures, it was revealed that the relevant information provided therein was not comprehensive enough as it had neither set out the standards of MPF sales conduct as expected by the insurance brokers themselves on their SIs, nor had it laid down the key controls and procedures that should be put in place by the insurance brokers for securing compliance with the MPF Conduct Guidelines.

Good Practices:

Insurance brokers should devise a comprehensive set of written MPF policies and procedures by explicitly setting out the standards of sales conduct for their SIs as well as the controls and procedures that should be put in place by the insurance brokers for securing compliance by themselves and their SIs when conducting MPF regulated activities.

C3 Confirmation Form Devised by Insurance Brokers

In accordance with the MPF Conduct Guidelines, the insurance brokers registered as an MPF principal intermediary and their SIs have to comply with certain requirements when carrying on MPF regulated activities. In this regard, almost all insurance brokers have devised their own confirmation form (“Confirmation Form”) to be signed by clients so as to ascertain whether their SIs have performed the necessary steps when carrying on MPF regulated activities for complying with the requirements under the MPF Conduct Guidelines.

However, it was noted that some insurance brokers had not compulsorily required their SIs to complete and submit their own Confirmation Form when they were conducting MPF regulated activities. Besides, some insurance brokers had neither put in place any monitoring mechanism nor had they taken any follow-up actions with the relevant SIs if no Confirmation Forms were received from the SIs when they submitted MPF forms for their clients. Under such circumstances, the insurance brokers would not be able to ascertain whether the MPF Conduct Guidelines have been complied with by their SIs.

Good Practices:

Insurance brokers should establish and maintain proper monitoring controls and procedures regarding the submission of Confirmation Form so as to ensure their SIs’ compliance with the MPF Conduct Guidelines.

C4 Provision of Copies of Completed Forms to Clients

In accordance with paragraph III.3 of the MPF Conduct Guidelines, a copy of the forms, duly completed and signed by the client, should be provided to the client as soon as reasonably practicable.

To comply with the aforesaid requirement, some insurance brokers would, through internal training, remind their SIs to provide their clients with copies of the MPF forms once the forms were completed and signed by the clients. However, it was noted that some insurance brokers had not put in place proper mechanism to monitor whether their SIs had provided copies of the MPF forms to clients and if so, whether the copies of forms had been delivered to the clients within a reasonable timeframe. As such, those insurance brokers might not be able to ascertain whether copies of all the MPF forms completed and signed by clients had in fact been provided to clients as soon as reasonably practicable.

Besides, some insurance brokers mistakenly believed that they were only required to provide clients with copies of forms as devised by themselves (e.g. Confirmation Form as mentioned in C3 above). As a result, they would not take the initiative to provide clients with copies of other MPF forms which were also completed and signed by their clients (e.g. MPF account application forms as devised and required by MPF approved trustees) when the insurance brokers were carrying on MPF regulated activities.

Good Practices:

Insurance brokers should establish and maintain proper monitoring controls and procedures to ensure that copies of all MPF forms completed and signed by clients will be provided to clients as soon as reasonably practicable.

C5 Prompt Execution

In accordance with paragraph III.17 of the MPF Conduct Guidelines, an insurance broker registered as an MPF principal intermediary and its SIs should take all reasonable steps to carry out client instructions promptly. Client instructions refer to instructions to the MPF registered intermediary (e.g. passing an enrolment form to the approved trustee).

However, some insurance brokers had not prescribed a specific timeframe for their SIs to submit the completed and signed MPF forms to the insurance brokers for processing, nor had they put in place proper mechanism to monitor the timeline of such submission by their SIs. As such, those insurance brokers might not be able to ascertain whether their SIs had taken all reasonable steps to carry out client instruction promptly.

Good Practices:

To ensure compliance with the “prompt execution” requirement, insurance brokers are suggested to prescribe a specified timeframe for the submission of completed and signed MPF forms by their SIs, establish and maintain proper internal controls and procedures to monitor the submission of MPF forms by their SIs, and take follow-up actions with their SIs if there is any delay.

C6 *Disclosure of Necessary Information to the Client*

In accordance with paragraphs III.32 to III.35 of the MPF Conduct Guidelines, MPF registered intermediaries, in the initial contact with clients, should provide their clients with some necessary information. Besides, according to paragraph III.36 of the MPF Conduct Guidelines, the relevant disclosures should be made in a document in hard copy or electronic form, and a copy of such document should be kept for a minimum period of seven years.

However, it was noted from some insurance brokers that there was no standard procedures for their SIs to provide and document the disclosures provided to clients when conducting MPF regulated activities and consequently, these insurance brokers were in a difficult position to ascertain as to whether their SIs had, in fact, provided their clients with the requisite disclosures or the disclosures provided to clients were complete and accurate.

Good Practices:

Insurance brokers should establish and maintain proper controls and procedures to ensure that their SIs will provide clients with the requisite disclosures under paragraphs III.32 to III.35 of the MPF Conduct Guidelines, and all the disclosures are made in a document in accordance with paragraph III.36 of the MPF Conduct Guidelines.